

LESSONS LEARNED

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Court Rejects Challenges to Yucca EIS, Transportation Plan

The U.S. Court of Appeals for the District of Columbia Circuit recently denied the State of Nevada’s petition for review of the Department of Energy’s (DOE’s) 2002 Yucca Mountain Repository EIS and the associated 2004 Record of Decision (ROD) selecting an overall plan for transporting spent nuclear fuel and high-level radioactive waste to the planned repository. In an August 8, 2006, decision, the court found that five of Nevada’s NEPA claims were without merit and three claims were not ripe for review. Nevada could appeal the decision.

The court confirmed the appropriateness of DOE’s transportation planning process for Yucca Mountain. The *Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (Repository EIS; DOE/EIS-0250, February 2002), one of DOE’s most highly complex NEPA documents, serves as a programmatic NEPA review, from which the NEPA analysis for future project-specific actions may be tiered. Of particular interest is the court’s discussion of the appropriate level of detail needed in a programmatic document, such as the Repository EIS, and in subsequent tiered documents, such as the *EIS for the Alignment, Construction, and Operation of a Rail Line to*



Most spent nuclear fuel and high-level radioactive waste would travel to Yucca Mountain by rail in shipping casks certified by the Nuclear Regulatory Commission.

a Geologic Repository at Yucca Mountain, Nye County, Nevada (Rail Alignment EIS, in preparation). Other elements of the court order also are of general interest to NEPA practitioners, including those related to the “hard look” standard, expressions of an agency’s preferred alternative, and the need for potential plaintiffs to raise concerns during the NEPA process.

(continued on page 4)



Lynton Caldwell, “Father of NEPA,” 1914–2006

Lynton Keith Caldwell, a principal architect of the National Environmental Policy Act of 1969 and “inventor” of the environmental impact statement, died August 15, 2006, at his home in Bloomington, Indiana, at the age of 92. Combining a long academic career with national and international public service, Indiana University Professor Caldwell was one of the first to define environmental policy studies as a distinct field – the examination of human, including political, interaction with the natural environment – and he was a pioneer in devising public policies to promote environmental stewardship.

Lynton Caldwell
Professor Emeritus of Public and Environmental Affairs
 (photo: Indiana University)

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Inside *LESSONS LEARNED*

Welcome to the 48th quarterly report on lessons learned in the NEPA process. We remember Lynton Caldwell, who promoted a vision of *productive harmony* – a balance of the interests of the environment and human society. The NEPA process remains a useful tool for pursuing that vision by integrating environmental analysis into the decisionmaking process. With this issue, we have completed 12 years of *LLQR*, with an emphasis on continuous improvement. As always, we welcome your suggestions.

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Carol Borgstrom

Director
Office of NEPA Policy and Compliance

Be Part of Lessons Learned

We Welcome Your Contributions

We welcome suggestions, comments, and contributed drafts for the *Lessons Learned Quarterly Report*. We especially seek case studies illustrating successful NEPA practices. Draft articles for the next issue are requested by November 1, 2006. Contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326.

Quarterly Questionnaires Due November 1, 2006

Lessons Learned Questionnaires for NEPA documents completed during the fourth quarter of fiscal year 2006 (July 1 through September 30, 2006) should be submitted by November 1, but preferably as soon as possible after document completion. The Questionnaire is available on the DOE NEPA website at www.eh.doe.gov/nepa under Lessons Learned Quarterly Reports. For Questionnaire issues, contact Vivian Bowie at vivian.bowie@eh.doe.gov or 202-586-1771.

LLQR Online

Current and past issues of the *Lessons Learned Quarterly Report* are available on the DOE NEPA website at www.eh.doe.gov/nepa. Also on the website is a cumulative index of the *Lessons Learned Quarterly Report*. The index is printed in the September issue each year.

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NAEP Invites Abstracts, Award Nominations for 2007 Conference



How has NEPA enhanced environmental quality? How have agencies tailored their NEPA programs to meet environmental goals? Questions like these will be the focus of discussion at the National Association of

Environmental Professionals' (NAEP's)

32nd Annual Conference, *Environmental Leadership: Science, Education, Alliances*, to be held April 22–25, 2007, in Orlando, Florida. The conference includes a “NEPA Symposium” and sessions on 13 other topics.

Abstracts for papers, posters, and other presentations are due September 30, 2006.

At the conference, NAEP will present its 11th National Environmental Excellence Awards in eight categories, including NEPA Excellence, Public Involvement/Partnership, Educational Excellence, Environmental Management, and Environmental Stewardship, to recognize significant environmental achievements from across the country. **The deadline for award nominations is February 1, 2007**; NAEP membership is not required for entry. Winners will be invited to present their program or project at a technical session at the conference. Additional information, including instructions for submitting an abstract and award nomination forms, is provided on the NAEP website (www.naep.org). 

NEPA Office to Join General Counsel

DOE announced on August 30, 2006, the creation of an Office of Health, Safety and Security. Most parts of the Office of Environment, Safety and Health will transition into the new Office. The Office of NEPA Policy and Compliance, however, will be transferred to the Office of the General Counsel.

Caldwell (continued from page 1)

A key to understanding NEPA may be found in the phrase “. . . to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.” This statement has often been interpreted to require a balancing of equities, primarily economic and environmental. But the intent of NEPA would not be achieved by off-setting (but still retaining) an economic “bad” with an environmental “good,” as mitigation measures may attempt. More consistent with the spirit of the Act would be a synthesis in which “productive harmony” is attained and transgenerational equity is protected.

Lynton Caldwell, Testimony at NEPA Hearing,¹ March 18, 1998
House of Representatives Committee on Resources

Father of NEPA and Inventor of the EIS

Professor Caldwell is credited with initiating environmental policy studies with “Environment: A New Focus for Public Policy?,” an article published in *Public Administration Review* in 1963. His landmark contribution, however, came six years later. As a consultant to the then Senate Committee on Interior and Insular Affairs, he prepared *A National Policy for the Environment*, much of which was incorporated into NEPA, the environmental law enacted at the end of the December 1969 legislative session and signed into law by President Nixon on January 1, 1970. NEPA’s groundbreaking provision, devised by Professor Caldwell, was the requirement to assess the potential environmental impacts of a proposed major Federal action.

At a 1995 DOE conference held in observance of the 25th Anniversary of NEPA, Professor Caldwell discussed his efforts to identify an appropriate political strategy and an effective implementation approach for environmental stewardship. His comments reflect his expertise in public administration:

The Congress had no explicit constitutional authority to legislate environmental policy **per se**. But the Congress and the President did have authority to define and direct the policies and actions of the Federal agencies. Because agency missions impinged directly or indirectly upon almost every aspect of the American society, a statutory law could be enacted that would be both effective and constitutional. Moreover, a statutory declaration of national policy could be binding upon both the Legislative and Executive branches.

NEPA was thus conceived as a **national policy**, not merely a Congressional or Presidential Policy.

Implementing NEPA: A Non-Technical Political Task
DOE Conference: NEPA 25 (March 21, 1995)
[emphasis in original]

Evaluating DOE’s NEPA Reforms

Professor Caldwell, a fellow of the National Academy of Public Administration, chaired an Academy team in 1998 that evaluated the changes that DOE made to its NEPA procedures in response to a 1994 policy statement by then Secretary of Energy Hazel O’Leary. That report concluded that DOE had made substantial progress in improving the management of its responsibilities under NEPA (*LLQR*, September 1998, page 4). In its foreword, Professor Caldwell, who oversaw the analysis, was commended by the Academy’s President for his decades-long commitment to the environment and to improving America’s system of governance.

Publications and Awards

Professor Caldwell’s interest in the history and theory of public administration began with his Ph.D. studies at the University of Chicago and continued throughout his life. He authored 12 books, some 250 articles in refereed journals, and numerous reports and reviews for public and international agencies. His most recent book, in 1999, was *The National Environmental Policy Act: An Agenda for the Future* (reviewed in *LLQR*, September 2000, page 11). A collection of essays written between 1963 and 1973, *Environment as a Focus for Public Policy*, was selected for the American Library Association’s choice list of outstanding academic books. In 1991, Professor Caldwell received a United Nations Global 500 Award for his achievements in protecting and enhancing the planet’s environment and natural resources. 

From one perspective NEPA may be seen as the capstone of national environmental policy; more importantly, it should be viewed as the foundation for the future.

– Lynton Caldwell
Congressional Testimony, 1998

¹ <http://resourcescommittee.house.gov/archives/105cong/fullcomm/98mar18/caldwell.htm>.

Yucca Litigation *(continued from page 1)*

Nevada filed its petition for the court to review the Repository EIS in 2004, following DOE's issuance of the ROD (69 FR 18557; April 8, 2004), which selected the "mostly-rail" alternative for transporting spent nuclear fuel and high-level waste to the repository. (See *LLQR*, December 2004, page 17.) Among other issues, DOE reviewed combinations of rail and truck transport in the Repository EIS, including five possible corridors in Nevada for a proposed new branch rail line from existing railroads to the repository. The ROD selected the Caliente Corridor for further study of potential alignments for this new rail line. In the ongoing Rail Alignment EIS, DOE is conducting detailed analyses of the alternative alignments. (See *LLQR*, June 2004, page 12.)

Challenges to EIS Without Merit

The court found five NEPA claims brought by Nevada to be without merit. First, Nevada contended that DOE failed to consult with the Surface Transportation Board (STB) regarding the proposal to construct a branch rail line. STB's jurisdiction includes construction and other rail restructuring transactions for common carrier rail lines. The court concluded that because Nevada failed, in comments on the Repository EIS, to alert DOE of its contention that DOE was obligated to consult with STB, Nevada had "waived the argument by failing to raise it at the administrative level."

Second, Nevada contended that DOE failed to consult with the Nevada State Engineer. The court recounted NEPA regulations issued by the Council on Environmental Quality (CEQ), which distinguish an agency's duty with respect to state and local agencies from Federal agencies. NEPA imposes a duty on an agency to *obtain* comments from appropriate Federal agencies. However, the requirement is to *request* the comments of appropriate state and local agencies. The court determined that DOE had met this requirement by distributing the Draft Repository EIS to the State Engineer with a cover letter inviting comments. Moreover, the court noted that, though the State Engineer did not individually submit comments, Nevada's comments did indicate the contribution of the Nevada Division of Water, which is headed by the State Engineer.

Third, Nevada claimed that DOE violated NEPA by not identifying the Caliente Corridor as its preferred alternative in the Final Repository EIS. DOE had explained in the EIS its plan for identifying "... a preference among the five potential rail corridors in Nevada. If the Yucca Mountain site was approved (designated), DOE would issue at some future date a Record of Decision to select a mode of transportation. If, for example, mostly rail was selected . . . DOE would then identify a preference for one of the rail corridors

in consultation with affected stakeholders . . . In this example, DOE would announce a preferred corridor in the *Federal Register* . . . No sooner than 30 days after the announcement of a preference, DOE would publish its selection of a rail corridor in a Record of Decision."

Consistent with this explanation, DOE identified the Caliente Corridor as its preferred alternative in a *Federal Register* notice on December 29, 2003 (68 FR 74951). The court concluded that even if DOE violated the CEQ regulations (which require at 40 CFR 1502.14(e) that an agency identify its preferred alternative in the Final EIS, unless another law prohibits doing so), "the violation was harmless error." The court added that, "NEPA's goal of ensuring that relevant information is available to those participating in agency decision-making was not frustrated by the absence of language designating the Caliente Corridor as the DOE's preferred alternative."

Fourth, corridor selection and rail alignment are "closely related" actions, Nevada argued, and DOE should have evaluated them in a single EIS. DOE argued that it was not necessary to analyze all five corridors at the high-level of detail needed for making specific alignment decisions. The 0.25-mile-wide corridors are hundreds of miles long (e.g., Caliente is 319 miles) and conducting highly detailed field surveys of all five corridors was unreasonable, DOE argued. The court agreed with DOE's NEPA strategy that it was appropriate to consider the Repository EIS a programmatic EIS to be followed by subsequent narrower (i.e., tiered) EISs on particular sub-projects.

The DOE has acted well within its discretion in following the tiered approach regarding rail corridor selection and alignment and, accordingly, has not violated NEPA.

***– U.S. Court of Appeals
for the District of Columbia Circuit***

Fifth, Nevada claimed that DOE had not taken a "hard look" at the potential environmental impacts of rail corridor selection in the Repository EIS. The court pointed out that DOE had analyzed more than 12 environmental factors for each of the five alternative rail corridors and that Nevada had alleged a "handful" of inadequacies related to the analysis of cultural resources, floodplains, and archaeological and historic resources. "It is well settled that the court will not 'fleyspeck' an agency's environmental analysis, looking for any deficiency no matter how minor," the court wrote. Moreover, the court added, DOE is preparing a tiered EIS on the Caliente Corridor. While use of tiering does not relieve DOE

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Yucca Litigation *(continued from previous page)*

Yucca Mountain Key EIS and Program Milestones

- **February 14, 2002** – The Secretary of Energy recommended the Yucca Mountain site to the President; the Repository EIS was included as part of the basis for the recommendation pursuant to the Nuclear Waste Policy Act.
- **July 23, 2002** – President signed into law (Pub. L. 107-200) a congressional resolution designating the Yucca Mountain site for development as a repository for spent nuclear fuel and high-level radioactive waste.
- **October 25, 2002** – The Environmental Protection Agency published a Notice of Availability of the Final Repository EIS after DOE completed distribution to the public.
- **December 29, 2003** – DOE published a Notice of Preferred Nevada Rail Corridor (68 FR 74951), announcing the Caliente Corridor as DOE's preferred corridor in which to study alternative alignments for constructing a rail line to Yucca Mountain.
- **March 2004** – DOE issued a Supplement Analysis (DOE/EIS-0250-SA1) and concluded that a supplement to the Repository EIS was not required for a transportation scenario not explicitly analyzed in the EIS (i.e., the interim transportation plan of shipping spent nuclear fuel in legal-weight truck casks on rail cars to a rail-to-truck transfer station in Nevada, thence to the repository by truck).
- **April 8, 2004** – DOE issued its transportation ROD (69 FR 18557) selecting: (1) the mostly-rail scenario and leaving open the possibility of rail-to-truck transfer, as analyzed in the Supplement Analysis, in the event the repository opens before a rail line to Yucca Mountain is constructed; and (2) the Caliente Corridor in which to study alternative rail alignments.
- **April 8, 2004** – DOE issued a Notice of Intent (69 FR 18565) to prepare the Rail Alignment EIS.
- **December 2005** – DOE submitted a Case File, including an environmental assessment, to the Bureau of Land Management to support DOE's application for withdrawal of public lands within and surrounding the Caliente Corridor.
- **August 8, 2006** – U.S. Court of Appeals denied Nevada's request for review of the Repository EIS and associated transportation ROD.

from taking a hard look at potential environmental impacts in a programmatic EIS, the court concluded that the inadequacies alleged by Nevada do not make the Repository EIS inadequate.

Other Challenges Not Ripe for Review

In the ROD, DOE described an interim transportation plan that it could pursue if the repository were to open before the proposed new branch rail line is operational. In such a case, DOE could build a facility to transfer the casks containing spent nuclear fuel or high-level radioactive waste from rail cars to trucks that would then carry the casks to the repository, the ROD stated. Nevada claimed that this plan had not been evaluated in the Repository EIS and therefore a supplemental EIS is required. The court noted that "DOE's language [in the ROD] is replete with conditional phrases" and concluded that Nevada's claim will not be ripe for review until the Repository EIS "is used to support a concrete decision" regarding the interim transportation plan.

The court similarly drew upon conditional statements in the ROD to address Nevada's claim that the interim transportation plan is an arbitrary and capricious action and therefore a violation of the Administrative Procedure Act. The claim is not ripe, the court concluded, because the conditional language does not represent "final agency action."

Finally, Nevada claimed that DOE violated the Administrative Procedure Act by failing to get approval from the STB before selecting the Caliente Corridor. This claim was based on STB's exclusive jurisdiction over common carrier rail lines. The court found the claim not ripe because DOE has not decided to open operations of the proposed rail line to other carriers, and DOE has committed to obtain all necessary regulatory approvals before beginning construction.

Next Steps

Transportation planning related to Yucca Mountain continues along with other aspects of the repository program. DOE has announced its intention to complete the Rail Alignment EIS and a supplement to the Repository EIS by June 2008, and also to submit a License Application to the Nuclear Regulatory Commission for repository construction authorization at that time. Based on current schedules, the repository could begin receipt of spent nuclear fuel and high-level radioactive waste no sooner than 2017. 

Congressional NEPA Task Force Staff Issues Final Report

The staff of the Task Force on Improving the National Environmental Policy Act and Task Force on Updating the National Environmental Policy Act of the Committee on Resources, U.S. House of Representatives, presented its Final Report, *Recommendations to Improve and Update the National Environmental Policy Act* to Representative Cathy McMorris, Task Force Chair, on July 31, 2006. In addition to presenting 20 recommendations on NEPA implementation, as described below, the Final Report responds to comments on the Initial Report and lists near-term next steps: a Resources Committee hearing on the recommendations, additional dialogue with the Council on Environmental Quality (CEQ) on implementation, and consultations with stakeholders on impacts.

Ultimately, the staff's Final Report concludes, legislation should be introduced to facilitate implementation of the recommendations: "Taking concrete actions are necessary to ensure NEPA continues to be a viable tool for informed federal decisionmaking."

Recommendations are presented in nine groups, as indicated below. Two recommendations proposed in the Initial Report have been deleted: amending NEPA to automatically grant state, tribal, and local stakeholders cooperating agency status and to create a "NEPA Ombudsman" within CEQ.

Addressing Delays in the Process

- Amend NEPA to change "major federal action" to "significant federal action."
- Amend NEPA to express the need for timely completion of NEPA documents and amend CEQ regulations to set mandatory timelines, 18 months for an EIS and nine months for an EA (extensions on a case-by-case basis). NEPA documents not concluded in these times will be considered completed. "Sensible timeframes will make for better federal decisions."
- Issue CEQ regulations to establish clear criteria for the use of categorical exclusions, EAs, and EISs. "Utilizing the regulatory approach will provide flexibility."
- Amend NEPA to address supplemental NEPA documents. The amendment would exclude language now in the CEQ regulations that allows an agency to prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so. "Including this language would run counter to the goal of [reducing] incidents of supplemental NEPA documents."

Enhancing Public Participation

- Amend NEPA to recognize the significance of a Federal undertaking by its impact on the environment. Direct CEQ to prepare regulations to evaluate comments

LLQR Tracks Progress of NEPA Task Force

During the 45-day public comment period that ended February 6, 2006, more than 200 substantive comments were received on the staff-prepared Initial Report. (See *LLQR*, March 2006, page 3.) The Task Force has posted 138 of these comments on its website, <http://resourcescommittee.house.gov/nepataskforce.htm>. Task Force staff has told DOE NEPA Office staff that the remaining comments were not posted to the website because they are identical to posted comments.

The comments present highly diverse reactions to the recommendations presented in the Initial Report and contain many perspectives on NEPA's benefits and burdens. Approximately one-third of the posted comments are from companies and trade organizations and another third from public interest and legal groups. Individuals submitted one-fifth of the posted comments, and state, tribal, and local governments and organizations account for the rest.

For additional information on the Task Force and testimony provided at its nationwide hearings, please see the following past issues of *LLQR*:

- Initiation of Task Force and Spokane Hearing – June 2005, page 3
- Southwestern, Southern, and Intermountain States Hearings – September 2005, page 14
- Mid-Atlantic States hearing; hearings on NEPA litigation and NEPA "Lessons Learned and Next Steps" – December 2005, page 3
- Initial staff report – March 2006, page 3

based on impact. "CEQ should instruct agencies to assess comments according to the impact on the entity submitting them. This will give an agency the true 'effect' of an action on a scale from greatest to least impact. Agencies would be required to create a scoring mechanism consistent with their mission. All comments submitted would be subject to this type of evaluation."

- Amend NEPA to codify EIS page limits as normally less than 150 pages with a maximum of 300 pages.

Better Involvement for State, Local and Tribal Stakeholders

- Amend NEPA to include a policy that Federal agencies should use equivalent state environmental analysis statutes. Direct CEQ to prepare regulations to allow existing state environmental review processes to satisfy NEPA requirements.

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NEPA Task Force *(continued from previous page)*

Addressing Litigation Issues

- Amend NEPA to create a policy declaration on litigating under the statute. Direct CEQ to prepare regulations clarifying legal procedures for bringing suit under NEPA.
- Amend NEPA to require CEQ to provide litigation guidance to agencies.

Clarifying Alternatives Analysis

- Amend NEPA to require analysis of only reasonable alternatives. Amend CEQ regulations to state that reasonable alternatives are those supported by feasibility and engineering studies and capable of being implemented after taking into account cost, existing technologies, and socioeconomic consequences.
- Amend NEPA to clarify that the “no action alternative” must be analyzed.
- Amend NEPA to recognize that mitigation proposals that are utilized as part of the decisionmaking process must be implemented. Direct CEQ to promulgate guidance to make mitigation proposals mandatory.

Better Federal Agency Coordination

- Amend NEPA to clarify the responsibility of lead agencies.
- Direct CEQ to promulgate regulations to encourage more consultation with stakeholders.

Additional Authority for CEQ

- Amend NEPA to direct CEQ to control NEPA-related costs, including recommending to Congress some cost-ceiling policies.

Clarify Meaning of “Cumulative Impacts”

- Amend NEPA to clarify how agencies would evaluate the effect of past actions.
- Amend NEPA to instruct agencies to use practical considerations in assessing a future action’s impact on the environment. Direct CEQ to amend its regulations to clarify what actions are “reasonably foreseeable,” making certain that “speculative actions are not ‘reasonable’ within the context of cumulative impacts.”

Studies

Direct CEQ to study:

- NEPA’s interaction with other Federal environmental laws.
- Current Federal agency NEPA staffing issues.
- NEPA’s interaction with state “mini-NEPAs” and similar laws.

LLQR will continue to monitor and report on further developments regarding the Congressional NEPA Task Force. 

Observations on NEPA from Lynton Caldwell

On the impact of NEPA:

NEPA is potentially a powerful statute, well integrated, internally consistent, and flexible. . . . That it has made a significant difference in the United States and has influenced governments abroad is hardly debatable. NEPA was not a sudden inspiration, nor was it put over on an unsuspecting Congress and the public by an environmental lobby. Its purpose was never the writing of impact statements; but this action-forcing procedure has been a great inducement to ecological rationality in Federal actions which traditionally had largely ignored environmental consequences.

On the rise of a Federal role:

Emergence of environment as a public and national issue followed from profound changes in the population and economy of the United States in the course of the 20th century. . . . Progress of this new industrial society increasingly encountered and created environmental problems [with] which neither local government or the market economy could cope. Quality of life values in health, amenities, and opportunities were being lost or threatened and the causes transcended artificial political jurisdictions. Only the Federal government had the geographic scope and institutional structure able to deal with the growing array of interrelating problems now called “environmental.”

Congressional Testimony, 1998

CEQ Interagency Work Groups Developing NEPA Guidance

To support the Council on Environmental Quality's (CEQ's) implementation of the CEQ NEPA Task Force recommendations, the Office of NEPA Policy and Compliance recently reviewed three draft guidance products – a Citizen's Guide to NEPA, guidance on categorical exclusions, and guidance on Environmental Management Systems (EMSs) and NEPA integration – developed by CEQ-led interagency Work Groups.

Citizen's Guide to NEPA

CEQ distributed the draft *A Citizen's Guide to NEPA: Having Your Voice Heard* for Federal agency comment on July 11, 2006. Recommended by the Task Force based on inconsistencies in agency NEPA public involvement processes, the Guide aims to explain basic NEPA requirements, dispel common misinterpretations, and provide helpful tips about how to participate in the NEPA process.

The purpose of the Guide is to help citizens and organizations participate effectively in environmental impact assessment. The Guide clarifies Federal agencies' basic minimum requirements; distinguishes the roles of the Environmental Protection Agency, the states, and tribes; provides examples of the types of Federal actions usually requiring environmental impact assessment and what constitutes significant environmental impact; and discusses the minimum time periods for public notice, public involvement, and the public's right to appeal decisions. The Guide also urges the public to get involved in agencies' EMSs for post-decision monitoring and mitigation of environmental impacts.

In response to CEQ's request for agency comment, the NEPA Office, in consultation with DOE's NEPA Community, recommended strengthening the Guide by focusing more on the opportunities for public involvement required by the CEQ regulations that are common to all agencies.

Categorical Exclusions

The NEPA Office similarly provided comments regarding CEQ's draft guidance, *Establishing, Revising, and Applying Categorical Exclusions under NEPA*, on June 30, 2006. The Work Group's draft guidance is intended to assist agencies in developing and using categorical exclusions and documenting their use. In particular, it promotes interagency sharing of information ("benchmarking") to identify and support additional categorical exclusions.

The Work Group has considered comments received and expects CEQ to publish draft guidance in Fall 2006 for public review.

EMS and NEPA

CEQ requested public comments on its proposed guidance, *Aligning the Complementary Processes of Environmental Management Systems and the National Environmental Policy Act* (71 FR 40520; July 17, 2006), after receiving Federal agency comments on an earlier draft, including comments from DOE.



In its proposed guidance, CEQ indicates that because agencies generally have not integrated NEPA analyses into the implementation and management of proposed actions, the full value of resources expended in the NEPA process frequently is not realized. The proposed guidance presents a table that shows how elements of EMS and NEPA can be integrated to improve an agency's environmental performance. EMS, for example, typically requires identification of environmental impact information not only for ongoing activities, but also for new proposals. The NEPA process provides such forecasts for proposals at the design and decision phase, including potential mitigation measures.

The guidance states that incorporating an EMS approach into the NEPA process can drive the use of impact prediction and mitigation information beyond the decision stage and into day-to-day implementation. In addition, an EMS approach can improve the NEPA process through use of adaptive management techniques for projects that face uncertain or unforeseen conditions during implementation. Exploiting the complementary elements of NEPA and EMS can help managers make better decisions, reduce environmental impacts, and promote NEPA policy goals and processes.

Further Information

The NEPA Office is an active participant in CEQ's NEPA guidance development process and will continue to monitor the activities of the 12 Work Groups, participate in the review of draft guidance, and report on further developments in future issues of *LLQR*. For more information on the interagency Work Groups' guidance development process and the implementation of the NEPA Task Force recommendations, see *LLQR*, March 2006, page 10, and the CEQ website at www.nepa.gov. For further information on the Citizen's Guide, and EMS and NEPA guidance, contact Jim Daniel at james.daniel@eh.doe.gov or 202-586-9760; for further information on the categorical exclusion guidance, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. 

NEPA Quality Assurance Planning Progresses



As a follow-up to the discussion on “Building Quality into NEPA Documents” at the May 2006 NEPA Compliance Officer (NCO) meeting (*LLQR*, June 2006, page 1), the Office of NEPA Policy and Compliance convened several volunteers to formulate a strategy for reinvigorating quality assurance (QA) practices for NEPA documents. NCOs Jack Depperschmidt (Idaho), Harold Johnson (Carlsbad), Raj Sharma (Nuclear Energy), Hitesh Nigam (Fissile Materials Disposition), and Rich Bush (Legacy Management), and QA expert Randy Kay (Idaho), have joined NEPA Office staff on a QA guidance development team.

In an initial discussion held in July, the QA team endorsed suggestions made at the May NCO meeting that the NEPA Office should develop a model QA plan, with a companion guidance document. An overarching goal is to provide guidance regarding DOE-specific NEPA QA plans and implementation, while preserving Program and Field Office flexibility to tailor QA programs to their needs.

In support of the NEPA QA team’s recommended approach, Carol Borgstrom, Director, Office of NEPA

Policy and Compliance, requested NCOs to forward QA plans for their organization or specific NEPA documents to the NEPA Office. So far, over a dozen Offices have provided their plans and NEPA procedures. The team envisions that the model QA plan would be based on applicable requirements, such as DOE Order 414.1C, *Quality Assurance*; be consistent with DOE-wide QA practices; and incorporate the best elements of existing DOE NEPA QA plans.

Efforts to revitalize DOE’s approach to NEPA QA, initiated in January 2006 (*LLQR*, March 2006, page 5), have been well received by the DOE NEPA Community, and the team welcomes additional input. The team is considering such topics as how to structure an interface between contractor and DOE QA plans; roles and responsibilities for NCOs, NEPA Document Managers, and contractors; and processes for NEPA QA plan implementation. Comments or suggestions on these and other aspects of NEPA QA planning should be forwarded to Jeanie Loving at jeanie.loving@eh.doe.gov or 202-586-0125. 

e-NEPA: Electronic Access to DOE NEPA Documents

Noting the Department’s excellent record in meeting NEPA’s public involvement objectives, C. Russell H. Shearer, Acting Assistant Secretary for Environment, Safety and Health, on July 13, 2006, requested that Secretarial Officers and Heads of Field Organizations conduct security reviews of certain EISs archived on the DOE NEPA website (www.eh.doe.gov/nepa under DOE NEPA Documents) to determine whether electronic access limitations should be retained.

Among documents to be reviewed were 65 final EISs that were publicly available on the DOE NEPA website before September 11, 2001, but as a result of security changes implemented in November 2001, were archived on a secure, password-protected server. The documents will remain electronically inaccessible to the public unless DOE completes security reviews in accordance with DOE M 470.4-4, *Information Security*, Section B, part 2.g, and determines they can be placed, in whole or in part, on the publicly-accessible portion of the DOE NEPA website. (See *LLQR*, June 2006, page 2.)

In recognition of the staff resources that completing the security reviews will require, Mr. Shearer identified high priority documents that should be reviewed first, including



frequently-requested programmatic and site-wide EISs. The NEPA Office expects that transferring such EISs to the publicly-accessible server will result in NEPA process efficiencies because DOE still relies on many of these documents for decisions and references them in new NEPA documents.

So far, DOE has determined that electronic access limitations may be removed from four high priority documents: *Waste*

Isolation Pilot Plant Disposal Phase Supplemental EIS (DOE/EIS-0026-S2); *Tank Waste Remediation System EIS, Hanford Site, Richland, Washington* (DOE/EIS-0189); *DOE Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs EIS* (DOE/EIS-0203); and *Hanford Comprehensive Land Use Plan EIS* (DOE/EIS-0222).

However, Field Office reviews of some other EISs resulted in a recommendation that not only should electronic access limitations be retained, but also that limitations on paper distribution are warranted because some of these documents contain “Official Use Only” information.

Responses to the security review request are due by September 15, 2006, to DOE NEPA Webmaster, Denise Freeman, at denise.freeman@eh.doe.gov. 

Successful EA Results from Good Coordination with Project Sponsors and Environmental Experts

By: C. Barry Shedrow and Gregory L. Burbage, *Washington Savannah River Company* with Stephen Danker, *NEPA Document Manager, Savannah River Operations Office*

After assessing potential terrorist threats in accordance with security guidelines, the Savannah River Operations Office proposed five projects to consolidate plutonium-bearing materials at a single location and increase the physical safeguards and security of these materials. The projects would be located in diverse settings (i.e., greenfield as well as industrial areas), involve multiple organizations within DOE and the management and operating (M&O) contractor, and have differing programmatic priorities for funding and scheduling. In spite of this diversity, the NEPA Compliance Officer (NCO) proposed a strategy to address the five projects in a single EA, an approach that proved cost-effective and timely.

Document Preparation Benefited from Expert Resource Team

Environmental impacts of the proposed projects were analyzed in the *Environmental Assessment for Safeguards and Security Upgrades for Storage of Plutonium Materials at the Savannah River Site* (DOE/EA-1538, December 2005). The EA was prepared by a core team comprised of DOE and M&O contractor personnel, with involvement as needed from other DOE and contractor offices and outside organizations.

DOE members of the team were the NCO and the NEPA Document Manager, who provided direction and guidance; and staff from the Offices of Nuclear Material Stabilization Project and of Safeguards, Security, and Emergency Services. M&O staff from the Washington Savannah River Company's Nuclear Materials Disposition and Environmental Services Sections served as designated EA team leader, technical liaison, and specialists in environmental compliance and public involvement.

The key to a successful NEPA process proved to be the designation of one person as the team's technical liaison, who provided project information and detail for the EA across all five of the proposed project activities and who coordinated closely with the EA team leader. The EA team leader prepared the document and coordinated the involvement of outside organizations with special expertise: Savannah River National Laboratory for floodplain and wetlands delineation and impacts analysis, and human health effects analysis; U.S. Forest Service for

Geographically and Technically Diverse Projects

The five proposed projects addressed safeguards and security at the 310-square-mile Savannah River Site near Aiken, South Carolina:

- Consolidating plutonium-bearing materials from two storage facilities to a single upgraded facility.
- Constructing and operating facility modifications for container surveillance and stabilization.
- Conducting interim surveillance of stored materials until the facility modifications (above) are operational.
- Installing physical security upgrades: clearing adjacent land, constructing fences and barriers, and installing monitoring and detection systems.
- Expanding and upgrading the firing range in the protective forces' tactical training area.



The EA process resulted in preservation of this wetland by changing the boundary of the tactical training area.

(continued on next page)

Successful Coordination (continued from previous page)

assessment of potential impacts to threatened and endangered species and information regarding timber management and harvest; University of South Carolina's Savannah River Archaeological Research Program for archaeological review; and Washington Safety Management Solutions for accident analysis and hazards analysis.

Effective Strategies Addressed EA Challenges

The EA team found that effective management of the EA process depended on proactively addressing challenges as soon as possible.

- To initiate the EA process, the team undertook comprehensive internal scoping with representatives of the component projects to characterize data needs and establish a schedule. At these planning sessions, the project representatives made commitments to the team's technical liaison regarding timely provision of required data. Plans were made for frequent communication between component project leads, the technical liaison, and the EA team leader.
- To increase the efficiency of administering the NEPA process, a single funding source to support the EA was identified. The Office of the Assistant Manager for Nuclear Material Stabilization Project – the sponsoring organization for three of the five projects, including the ones with the highest urgency – recognized that funding the entire EA would reduce overhead costs and lead to more productive use of time.

- After EA preparation was underway, a proposed expansion of a component project was determined to require more tree removal than was initially envisioned. The EA team leader and technical liaison coordinated with the Forest Service to obtain additional floodplain and wetlands assessment information and with the Savannah River Archaeological Research Program to expand the archaeological reviews.

The scope change occurred near the end of the scheduled time for preparation of the EA. The early coordination with all involved organizations, including recognition of the importance of completing the EA on schedule, allowed management to mobilize the appropriate resources to acquire the field data necessary to revise the EA. The fact that the initial assessment information had been shared with the preparation team further facilitated quick revision of the EA and prevented impact to the EA schedule.

- To facilitate public involvement, the team used the *Environmental Bulletin from the Savannah River Site* to announce the initiation of the EA and later the availability of the EA for public preapproval review.

For more information, contact the DOE NEPA Document Manager, Steve Danker, at stephen.danker@srs.gov or 803-952-8603. 

Site's Environmental Bulletin Facilitates Public Involvement

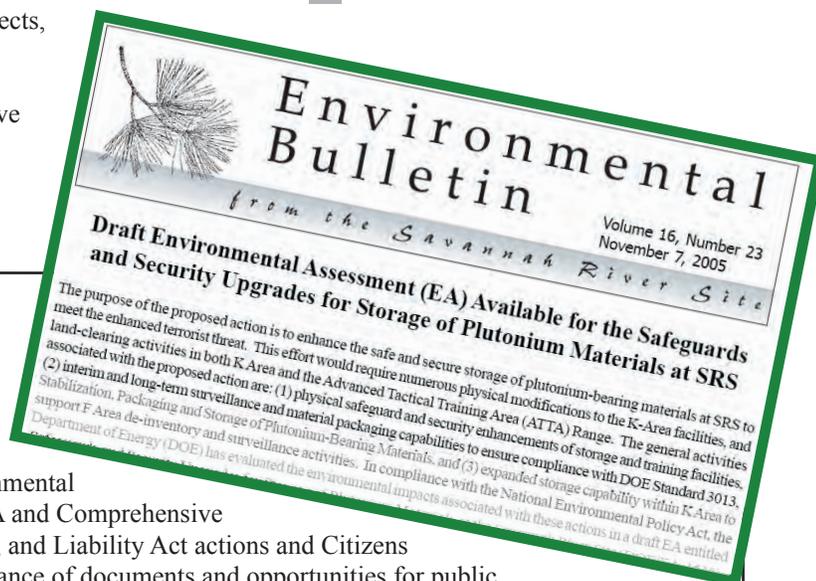
What: Postcard or up to 4-page newsletter, as appropriate for the content.

Why: To keep stakeholders informed of environmental aspects of site activities, especially NEPA and Comprehensive Environmental Response, Compensation, and Liability Act actions and Citizens Advisory Board activities, including issuance of documents and opportunities for public involvement.

How: Distributed by mail and posted at www.srs.gov/general/pubs/envbul/ebindex.htm.

When: Published as developments warrant, generally one to four times per month, with an issue covering NEPA updates at least once per quarter.

Who: Prepared by the M&O contractor with involvement of the Offices of Environment, Safety and Health and External Affairs at the Savannah River Operations Office.



Tips for Reviewing an EIS

When a new EIS lands on your desk for review, where do you begin? “I start with the table of contents to confirm that all the parts of an EIS are included and to get an overview of the EIS structure and alternatives,” said Carol Borgstrom, Director, Office of NEPA Policy and Compliance. Others among the NEPA Office staff and DOE’s NEPA Compliance Officers (NCOs) also start with the table of contents. A discussion at this year’s NCO meeting, led by Brian Costner, NEPA Office, highlighted other useful approaches and techniques for reviewing an EIS. (See *LLQR*, June 2006, page 1.)

“Regardless of the approach,” Ms. Borgstrom emphasized, “the key to a quality EIS review is: **Read the entire EIS.**”

Develop an Overall Approach

Many reviewers first try to understand the “story” being told through the EIS: What is DOE proposing? Are all reasonable alternatives assessed? Does the range of reasonable alternatives meet the purpose and need for agency action? How do the potential environmental impacts compare among alternatives? Do the parts hold together to make a cohesive whole?

Some reviewers start with the Summary – the part of the EIS that most people read. They proceed to the individual chapters ensuring that the information covered in the Summary is consistent with the body of the EIS.

Others use the *EIS Checklist*, prepared by the DOE Office of Environment, Safety and Health, as a guide for their review. The checklist simplifies the process of evaluating the EIS for completeness while also prompting reviewers to evaluate the quality of the EIS’s content. (The checklist is available on the DOE NEPA website at www.oh.doe.gov/nepa under Selected Guidance Tools.)

Still others focus on critical elements of the EIS, such as controversial environmental impacts, public comments, or topics within their areas of expertise. “Because an EIS is essentially built from the bottom up, I start with the appendices and work forward during the concurrence process, having reviewed important features such as the proposed action and range of reasonable alternatives earlier in EIS preparation,” explained Jeanie Loving, NEPA Office. “I look for sound technical methodology in the appendices, an accurate reflection of the impact estimates in the main body of the EIS, and end with the Summary.”

Participants at the NCO meeting discussed techniques that are helpful in implementing any approach to an EIS review. Four of these techniques are briefly described below.

Understand the Context and Identify Key Issues

Review documents prepared for, or about, the EIS. A quick re-read of the notice of intent, public comments and comment summaries, recent news articles, and other documents can refresh the reviewer’s memory about the major issues to be addressed in the EIS. Can the resolution of each issue be tracked to a conclusion, including, as appropriate, an explanation why more detailed discussion is not needed?

Further prepare for an EIS review by keeping up with developments related to the proposed action. Budget documents, congressional testimony by senior DOE officials, statements by interested individuals and organizations, permits and other regulatory documents, and news accounts are all sources of information that can help an EIS reviewer interpret the content of an EIS. Are

descriptions in the EIS consistent with DOE planning documents and agreements with external parties, including regulatory agencies? Is there important information from any of these sources that is missing from the EIS?

One purpose in reviewing information about the proposed action is to identify the key technical and policy issues related to the analyzed alternatives. These are the issues most critical to decisionmakers or most visible to the public. Does the EIS describe each issue, including differences among perspectives, in a fair and balanced manner?

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DOE ENVIRONMENTAL IMPACT STATEMENT CHECKLIST					
LIST 1: GENERAL	YES	NO	N/A	EIS PAGE	ADEQUACY EVALUATION AND COMMENTS
1.3.0 PURPOSE AND NEED FOR ACTION					
1.3.1 Does the EIS specify the underlying purpose and need to which DOE is responding in proposing the alternatives including the proposed action? [40 CFR 1502.13]					
1.3.2 Does the statement of purpose and need relate to the broad requirement or desire for DOE action, and not to the need for one specific proposal or the need for the EIS?					
1.3.3 Does the statement of purpose and need adequately explain the problem or opportunity to which DOE is responding?					
1.3.4 Is the statement of purpose and need written so that it (a) does not inappropriately narrow the range of reasonable alternatives, or (b) is not too broadly defined as to make the number of alternatives virtually limitless?					

The DOE EIS Checklist helps EIS preparers and reviewers avoid overlooking required and recommended elements of an EIS, and it provides a record of internal reviews. (Adapted from the DOE EIS Checklist.)

Reviewing an EIS (continued from previous page)

Review NEPA Regulations, Guidance

Throughout an EIS review, refer as needed to regulations and guidance from DOE and the Council on Environmental Quality (CEQ). In addition to the *EIS Checklist*, several of the commonly referenced guidance documents include CEQ's "40 Questions" and DOE's *Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements* (the "Green Book," December 2004), *Recommendations for Analyzing Accidents under the National Environmental Policy Act* (July 2002), *Environmental Impact Statement Summary* (September 1998), and, for a final EIS, *The EIS Comment-Response Process* (October 2004). These and other guidance documents, as well as CEQ and DOE NEPA regulations, are included in the *DOE NEPA Compliance Guide*, which is available on the DOE NEPA website at www.eh.doe.gov/nepa.

Evaluate Integrated Reviews

An EIS usually provides the mechanism for demonstrating how a proposed action would comply with environmental review requirements in addition to NEPA. Floodplain and wetland reviews, historic and cultural resource reviews, air conformity analysis, and reviews of potential impacts on threatened and endangered species are among the topics

that should be included in an EIS. Evaluate these reviews in terms of applicable requirements and the significance of potential impacts. Confirm that the analysis in the reviews is fully integrated, and consistently addressed, in the EIS.

Coordinate with Other EIS Reviewers

Several offices within DOE review each EIS before issuance, as do cooperating agencies for some EISs. It can be helpful for a reviewer to know which office's or agency's comments have been incorporated into an EIS (and whether any comments have not been addressed). This information may identify whether the comments of reviewers with particular interests or areas of expertise are reflected in the current draft. This information also can be used to identify reviewers who should coordinate comments, as well as any offices not involved in the EIS that should be.

"The outcome of the review process is not a better document for its own sake," explained Jim Daniel, Science/Nuclear Unit Leader, NEPA Office. "Rather, the objectives of the review are to ensure that the EIS fully and fairly lays out all the potential environmental impacts so that the public and decisionmakers can consider them and the Department can seek ways to mitigate any adverse impacts." ■■

Questions for an EIS Reviewer

- Using the *EIS Checklist* as a guide, are any elements missing from the EIS?
- Are the introductory chapters clear? Are the "story" and logic easy to follow? Is the text consistent with related documents (e.g., other NEPA documents, congressional testimony, budget documents, project management documents) and NEPA regulations and guidance?
- Is the purpose and need for agency action appropriately framed, clear, and objective?
- Are all reasonable alternatives covered in the range of alternatives? Is each analyzed alternative clearly described (e.g., complete process description) and given comparable attention throughout the EIS? Is there adequate discussion of alternatives considered but dismissed? Are all alternatives suggested in the scoping process included in the discussion? Is a preferred alternative identified?
- Do the affected environment and impact sections follow the sliding-scale principle (i.e., provide a level of detail appropriate to the significance of potential environmental impacts on the resource area)? Are the technical data, analyses, and conclusions consistent? Does the analysis of potential impacts acknowledge uncertainty, responsible opposing views, and controversial issues?
- Has a quality assurance plan been implemented for the EIS? For example, is there evidence that raw data such as radionuclide inventories have been verified or that calculations have been checked? Have numerical data been transcribed correctly from the appendices to the impact chapter and comparison of alternatives? Are the discussion and conclusions in the text supported by the data presented?
- Are referenced documents readily available and consistent with their use in the EIS?

New Guidance on EIS Distribution Emphasizes Stakeholder Preferences, Delivery Options

Some people would prefer to use a CD to browse through a large EIS, focusing only on the sections of particular interest. Others would prefer to read a paper copy, but would find it too costly or time-consuming to download and print an EIS from their home computer. Given DOE's responsibility to "encourage and facilitate public involvement" (40 CFR 1500.2), it is appropriate to honor individual preferences – print version, CD, or notification that an EIS is available on a DOE website. Even with the best efforts, however, an EIS distribution list is likely to include some people and organizations who have not expressed a preference. How can DOE best meet its responsibilities for EIS distribution to these stakeholders?

New DOE NEPA guidance, *EIS Distribution* (June 2006), addresses this and other questions, recognizing the importance of getting an EIS, in a timely manner and a useful format, to those who are interested in or potentially affected by a proposed action. "We expect implementation of this guidance to improve the efficiency and effectiveness of distribution of an [EIS], thereby allowing DOE to complete the NEPA process and implement its actions on schedule," C. Russell H. Shearer, Acting Assistant Secretary for Environment, Safety and Health, wrote on June 15, 2006, to Secretarial Officers and Heads of Field Organizations. "The guidance recognizes DOE's responsibility to provide an EIS in a format useful to recipients and describes the use of electronic tools (e.g., compact disks and Web sites)."

Soliciting Preferences

The guidance recommends that the NEPA Document Manager begin building an EIS distribution list – names and preferences – at the outset of the EIS process, even before publishing a notice of intent, by using existing sources, such as site stakeholder lists, as well as consulting with the Office of Congressional and Intergovernmental Affairs. Good practice also is to collect additional names and preferences throughout the NEPA process (e.g., at public scoping meetings, at hearings on the draft EIS, and through any EIS-specific website).

In each opportunity to add stakeholders to the distribution list or to update their contact information, providing a menu of choices for volume and format preferences allows DOE to fulfill stakeholder needs and may save DOE printing costs. To aid this process, the *Directory of Potential Stakeholders for DOE Actions under NEPA* (updated annually) indicates whether national and regional stakeholders prefer to receive notification of the website availability of a draft or final EIS, or a printed copy or CD. (The 2006 *Stakeholders Directory* was issued in July, related article on next page.)

Three Options If Preference Unknown

When DOE does not know stakeholder preferences, the guidance presents three options. One option is to follow DOE's common practice of sending a printed copy of the entire EIS to those on the distribution list who have not expressed a preference. This approach avoids later requests for a complete printed copy of the EIS.

A second option is to send a postcard or e-mail message shortly before EIS distribution that, in addition to requesting the recipient to identify or verify a preference, clearly states what DOE will send if the stakeholder does not reply. This provides notice that those who do not specify a preference may receive, for example, the entire printed EIS, or only the printed EIS Summary and a CD of the entire EIS, or only a letter telling where the EIS is available in reading rooms and on the Web.

A third option is to distribute the printed EIS Summary and a CD with the entire EIS to those stakeholders who have not expressed a preference without first sending the notification described for option two. This may be appropriate, for example, when many stakeholders have commented by submitting an e-mail or postcard prepared by a third party. It also may be appropriate for a very large EIS, as was the case for distribution of the *Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada* (DOE/EIS-0250, February 2002). (See *LLQR*, March 2003, page 9.)

Anytime DOE chooses not to distribute the entire printed EIS to those on the distribution list who have not expressed a format preference, the guidance advises to make it simple for stakeholders to later request a printed copy of the entire EIS. The guidance refers to the Council on Environmental Quality's NEPA regulations (40 CFR 1502.19) whereby it may be necessary to extend the comment period by 15 days for those recipients who make a timely request for a printed copy.

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Useful Elements of a Distribution List Include:

- Contact information
(name, organization, mailing and e-mail address)
- Requested EIS volumes
(entire EIS, summary only)
- Preferred format
(printed copy, CD, access from a DOE website)
- Other information appropriate for a particular EIS
(source for each name on the list)

EIS Distribution Guidance (continued from previous page)

Guidance Provides Process Recommendations, Templates

The guidance emphasizes coordination among offices within DOE and the use of an EIS Communication Plan to facilitate this coordination. The guidance includes a postcard template to solicit stakeholders' preferences and updated contact information before EIS distribution. Other templates included in the guidance provide sample text for letters distributing an EIS and filing an EIS with the Environmental Protection Agency.

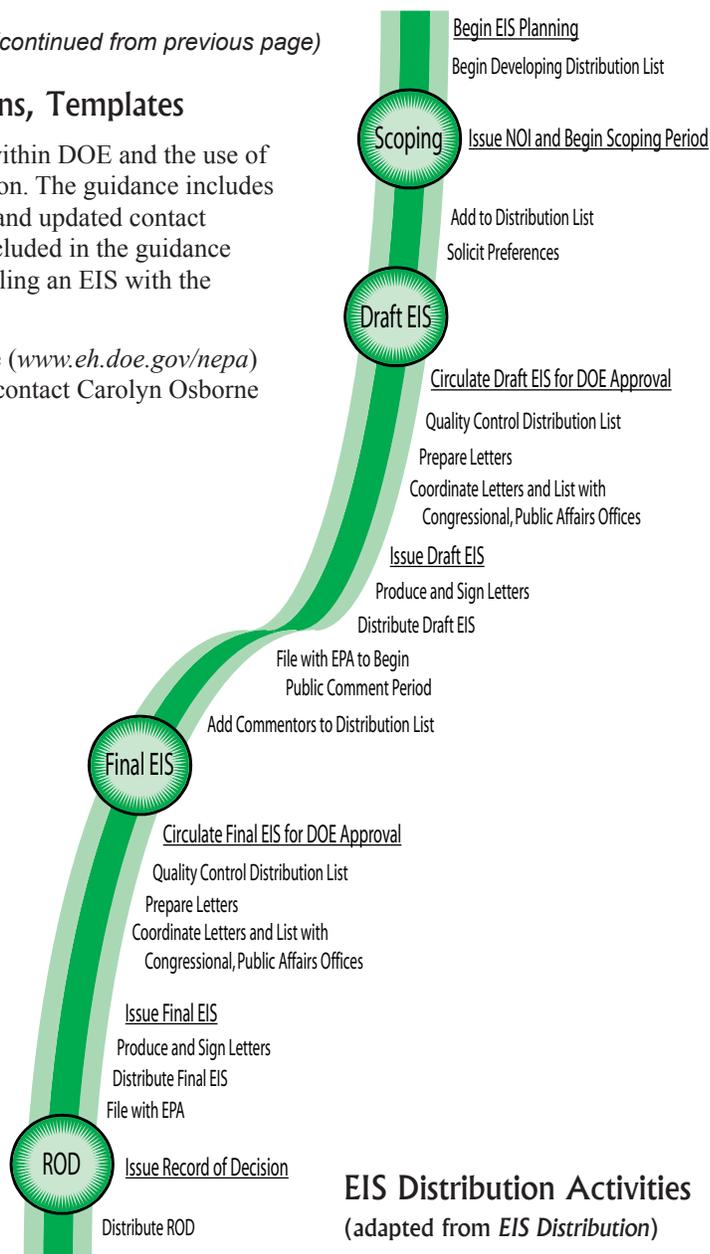
EIS Distribution is available on the DOE NEPA website (www.eh.doe.gov/nepa) under Selected Guidance Tools. For more information, contact Carolyn Osborne at carolyn.osborne@eh.doe.gov or 202-586-4596. 

EIS Communication Plan

The purpose of an EIS Communication Plan, which is prepared by the NEPA Document Manager, is to identify the messages to be communicated and the audiences to be addressed, and to coordinate the schedule, timing, and individuals responsible for distributing EIS documents and providing notifications to stakeholders.

An EIS Communication Plan addresses five key questions:

- **What** is being announced?
- **Who** makes the announcement **to whom**?
- **Where** will the announcement be made?
- **When** will the announcement be made?
- **How** will the announcement be made?



EIS Distribution Activities
(adapted from *EIS Distribution*)

Updated Stakeholders Directory Supports EIS Distribution

The *Directory of Potential Stakeholders for DOE Actions under NEPA* (23rd Edition, July 2006) has been distributed to the DOE NEPA Community. The information in the *Directory*, updated annually, is meant to supplement lists of affected or interested parties that DOE Offices compile for particular projects or facilities. The *Directory* identifies potential NEPA document recipients in Federal agencies, states, and nongovernmental organizations. The appendices present listings for DOE contacts: NEPA Compliance Officers, Departmental and National Laboratory Public Affairs Directors, and points of contact for tribal issues.

The *Directory* has been distributed on compact disk as a pdf file and database application that allows users to copy selected contact information onto a clipboard, and then into other applications – such as word processing – to produce mailing lists, letters, or labels. Paper copies of the *Directory* also were distributed, and it is posted on the DOE NEPA website (www.eh.doe.gov/nepa/tools/StakeholdersDirectory.pdf). For further information, contact Yardena Mansoor at yardena.mansoor@eh.doe.gov or 202-586-9326. 

DOE-wide NEPA Contracts Expire Fall 2007 – Help Wanted!

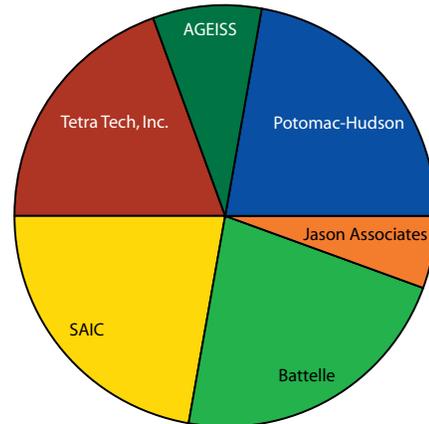
As the Department nears the end of the five-year term for the second set of DOE-wide NEPA Contracts, the Office of NEPA Policy and Compliance is pleased that the contracts have served us so well, particularly in minimizing time needed to start the NEPA process.

The Contract Administrator, David Nienow, reports that a total of 36 tasks have been awarded under the existing DOE-wide NEPA contracts, and of the 36 tasks, data for the time it took from the request for proposal to an award is available for 26 tasks. For these 26 tasks, the average time from request for proposal to award was 23 days. Two of the 26 tasks had one day turn-arounds. The charts to the right illustrate the distribution of the 36 task orders among DOE Programs and among the DOE-wide NEPA contractors. These charts do not, however, reflect the dollar value distribution of task orders issued.

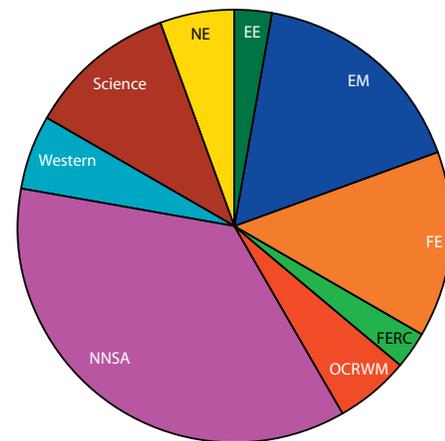
However, work must start soon to have a new set of contracts in place when the current ones expire. The contracts obtained under full and open competition – Battelle Memorial Institute, Jason Associates Corporation, Science Applications International Corporation, and Tetra Tech, Inc. – expire at the end of September 2007. The small business contracts (AGEISS Environmental, Inc. and Potomac-Hudson Engineering, Inc.) expire in early November 2007.

Informal discussions are underway on how to proceed. The NNSA Service Center has agreed to handle the follow-on procurement solicitation leading to the award of new contracts for both NNSA and DOE Program and Field Offices. NCOs are needed, however, to serve on the Source Evaluation Team that helps select the contracts. Interested? Contact Carolyn Osborne, NEPA Office, at carolyn.osborne@eh.doe.gov or 202-586-4596. 

Relative Distribution of Task Orders by Contractor



Relative Distribution of Task Orders by Program Office



EE: Office of Energy Efficiency and Renewable Energy
 EM: Office of Environmental Management
 FE: Office of Fossil Energy
 FERC: Federal Energy Regulatory Commission
 OCRWM: Office of Civilian Radioactive Waste Management
 NNSA: National Nuclear Security Administration
 Western: Western Area Power Administration
 Science: Office of Science
 NE: Office of Nuclear Energy

Tasks Recently Awarded Under the Existing DOE-wide NEPA Contracts

Description	DOE Contact	Date Awarded	Contract Team
FutureGen Project EIS	Mark McKoy 304-285-4426 mmckoy@netl.doe.gov	6/12/2006	Potomac-Hudson
Preparation and Review of a Supplemental EIS and Other Environmental Documents for the Yucca Mountain Repository	Jane Summerson 702-794-1493 jane_summerson@ymp.gov	7/6/2006	Jason Associates
Supplement to Stockpile Stewardship and Management PEIS – Complex 2030	Ted Wyka 202-586-3519 theodore.wyka@hq.doe.gov	8/16/2006	Tetra Tech, Inc.

Transitions

New Contract Administrator: David Nienow

David Nienow has assumed the administration duties for the DOE-wide NEPA contracts from Agustin Archuleta, who has taken another position in the National Nuclear Security Administration (NNSA) Service Center. Mr. Nienow is a Level III certified acquisition professional with over 30 years of experience in both Federal and commercial contracting. He can be reached at dnienow@doeal.gov or 505-845-6072.

Program and Field Office “Ordering Contracting Officers” who wish to issue tasks under these contracts are encouraged to consult with Mr. Nienow for advice on completing the Request for Task Proposal/Task Order Form (available under “Tools for Contract Use” on the DOE-wide NEPA Contracts page, www.eh.doe.gov/nepa/contracting.html, of the DOE NEPA website). For tracking and reporting purposes, the Ordering Contracting Officer must include the DOE-wide NEPA Contract Administrator on distribution for all task orders and task order modifications issued.

NEPA Compliance Officers

Hanford Site: Woody Russell

Woody Russell now serves as the NCO for the Richland Operations Office and Office of River Protection at the Hanford Site following the retirement of Paul Dunigan. He has been supporting the Office of River Protection in the areas of environmental permitting, compliance, Tri-Party Agreement implementation, and NEPA activities since he joined the Office in 2001. Previously, he worked for the DOE Idaho Operations Office, where he served as the air quality subject matter expert for the Idaho National Laboratory, air quality lead for several Idaho EISs, and Federal coordinator for the Citizens Advisory Board. Mr. Russell can be reached at woody_russell@orp.doe.gov or 509-373-5227.

Under a Memorandum of Agreement, the Managers of the Richland Operations Office and the Office of River Protection jointly appoint a single NCO to coordinate NEPA activities for both Offices.

NNSA Service Center: Elizabeth Withers

Elizabeth Withers, who has been the NCO for the Los Alamos Site Office for several years, has now been designated an NCO for the NNSA Service Center in Albuquerque, New Mexico. Ms. Withers can be reached at ewithers@doeal.gov or 505-845-4984. Jeffrey Robbins (jfrobbins@doeal.gov or 505-845-4426) continues to serve as an NCO for the NNSA Service Center. 



Litigation Updates

DOE NEPA Litigation in Brief

A summary of the August 8, 2006, U.S. Court of Appeals decision regarding the Yucca Mountain Repository EIS begins on page 1 of this issue of LLQR. The status of the legal proceedings in other DOE NEPA cases is summarized below. No decisions have been announced in these cases.

Border Power Plant Working Group v. Department of Energy et al. (S.D. Calif.): A hearing is scheduled for October 6, 2006, in this case where the plaintiff alleges that DOE and the Bureau of Land Management violated NEPA by preparing an inadequate *EIS for the Imperial-Mexicali 230-kV Transmission Lines* (DOE/EIS-0365, December 2004), which was completed after the court found the agencies' 2001 EA inadequate. The plaintiff also alleges that the agencies violated the Clean Air Act by failing to prepare a conformity determination. A conformity determination is a process by which Federal agencies assess how their actions would conform to applicable state implementation plans for achieving and maintaining the National Ambient Air Quality Standards for criteria pollutants. (See *LLQR*, March 2006, page 20; December 2005, page 36; September 2005, page 25; June 2004, page 16; December 2003, page 7; and September 2003, page 22.) [Case No.: 02-0513]

Coalition on West Valley Nuclear Wastes et al. v. Department of Energy (W.D. N.Y.): The court issued an amended scheduling order on July 17, 2006, that allows for filing the administrative record and briefing of the case by November 11, 2006. The plaintiffs allege that DOE is in violation of NEPA and a stipulation settling a prior lawsuit because DOE segmented its NEPA analysis at the West Valley Demonstration Project site in New York by analyzing its proposed action in two separate EISs (one on waste management, a second being prepared on decommissioning). The plaintiffs also allege that the *West Valley Demonstration Project Waste Management Environmental Impact Statement* (DOE/EIS-0337, December 2003) does not support the Record of Decision's (70 FR 35073; June 16, 2005) reference to the possible use of a waste-incident-to-reprocessing evaluation to determine that certain wastes at West Valley can be managed as low-level waste or mixed low-level waste. (See *LLQR*, September 2005, page 24.) [Case No.: 05-0614]

Natural Resources Defense Council et al. v. Department of Energy et al. (N.D. Calif.): In this case involving a challenge to the adequacy of DOE's *Environmental Assessment for Cleanup and Closure of the Energy Technology Engineering Center* (DOE/EA-1345, March 2003) and its associated Finding of No Significant Impact (FONSI), the court on June 20, 2006, cancelled a previously scheduled hearing on summary judgment and, instead, determined to review the matter based on briefs submitted to the court. The plaintiffs allege that DOE's cleanup activities at the Energy Technology Engineering Center are in violation of NEPA, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Endangered Species Act. In a brief filed on April 12, 2006, DOE states that the EA is adequate and that an EIS is not required. (See *LLQR*, December 2004, page 16.) [Case No.: 04-04448]

Tri-Valley Communities Against a Radioactive Environment et al. v. Department of Energy et al. (9th Cir.): This case is an appeal of the district court's ruling on September 10, 2004, that DOE's EA for the Biosafety Level 3 facility at Lawrence Livermore National Laboratory is sufficient. The court held a hearing on June 13, 2006. (See *LLQR*, June 2005, page 23; December 2004, page 18; March 2004, pages 2 and 16; and September 2003, page 23.) [Case No.: 04-17232]

Winnemucca Indian Colony et al. v. U.S. et al. (D. Nev.): The plaintiffs allege, among other things, that DOE and the Defense Threat Reduction Agency (DTRA, an agency of the Department of Defense) must complete an EIS before conducting a proposed experiment known as Divine Strake, which would involve a detonation of 700 tons of ammonium nitrate and fuel oil at the Nevada Test Site. DOE has withdrawn its FONSI "to clarify and provide further information regarding background levels of radiation from global fallout in the vicinity" of the proposed experiment, as announced in May. (See *LLQR*, June 2006, page 17.) In response, the court ordered a stay of the litigation. Litigation proceedings could resume if DOE makes a final agency decision to conduct the experiment. DTRA has announced that the experiment would not occur before several months into 2007. [Case No.: 06-00497]

(continued on next page)

Other Agency NEPA Litigation

Environmental Impact of Terrorist Attack Required in NEPA Review, Court Rules

The Nuclear Regulatory Commission (NRC) erred in its determination that NEPA does not require an analysis of potential impacts resulting from a terrorist attack, concluded the U.S. Court of Appeals for the Ninth Circuit on June 2, 2006. The court did not direct how NRC is to evaluate terrorism-related impacts, instead leaving that to agency discretion consistent with NRC's statutory and regulatory requirements. (The decision is available on the court's website, www.ca9.uscourts.gov, under Opinions, then June 2, 2006, *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission*.)

The plaintiffs petitioned the court to review NRC's approval of a dry cask spent nuclear fuel storage facility proposed for the Pacific Gas and Electric Company's Diablo Canyon Power Plant near San Luis Obispo, along California's coast. The plaintiffs' NEPA claims challenged a 2003 decision by the NRC not to evaluate terrorism-related impacts in an EA completed for the proposed storage facility.

Court Rejects NRC Reasoning

The NRC based its conclusion that NEPA does not require analysis of impacts from terrorist acts on four grounds, which it had outlined initially in separate regulatory proceedings in December 2002. (See *LLQR*, March 2003, page 10.) The court concluded that the four grounds, "either individually or collectively, do not support the NRC's categorical refusal to consider the environmental effects of a terrorist attack."

First, the NRC argued that the possibility of a terrorist attack is "too far removed from the natural or expected consequences of agency action to require a study under NEPA." The court concluded "that it was unreasonable for the NRC to categorically dismiss the possibility of terrorist attack" without addressing factual contentions that the presence of the storage facility would increase the probability of a terrorist attack on the Diablo Canyon facility or that the storage facility would itself be a primary target for attack. The court also concluded that the NRC's position is "inconsistent with the government's efforts and expenditures to combat this type of terrorist attack against nuclear facilities."

Second, the NRC argued that because the risk of a terrorist attack cannot be quantified, the analysis is likely

to be meaningless. "If the risk of a terrorist attack is not insignificant, then NEPA obligates the NRC to take a 'hard look' at the environmental consequences of that risk," the court concluded. "The NRC's actions in other contexts [e.g., a top-to-bottom terrorism review] reveal that the agency does not view the risk of terrorist attacks to be insignificant. Precise quantification is therefore beside the point."

Third, an evaluation of terrorism-related impacts is a form of "worst-case" analysis, which is not required by NEPA, the NRC argued. The court concluded that "the NRC's argument wrongly labels a terrorist attack the worst-case scenario because of the low or indeterminate probability of such an attack." The court stated that what was sought was "an analysis of the range of environmental impacts likely to result in the event of a terrorist attack" on the storage facility – not an analysis of "the most extreme (i.e., the 'worst') possible environmental impacts of a terrorist attack."

Fourth, NEPA's public process is not an appropriate forum for sensitive security issues, the NRC argued. The court acknowledged that security considerations may require some accommodation in NEPA implementation, such as limiting public access to certain information. The court concluded, though, that this "does not explain the NRC's determination to prevent the public from contributing information to the decisionmaking process." A willingness to hear and consider such information, the court added, "would fulfill both the information-gathering and the public participation functions of NEPA."

The court determined that the NRC's EA is inadequate and remanded the matter to the agency to "fulfill its responsibilities under NEPA." In doing so, the court stated that it was not prejudging any action the agency might pursue to comply with NEPA. "We hold only that the NRC's stated reasons for categorically refusing to consider the possibility of terrorist attacks cannot withstand appellate review based on the record before us," the court wrote.

The NRC has until October 2, 2006, to determine whether to seek Supreme Court review of the Ninth Circuit Court's decision. [Case No.: 03-74628]

(continued on next page)

Litigation Updates *(continued from previous page)*

Appeals Court Upholds BLM's Tiered NEPA Strategy for Alaska Oil and Gas Leases

The Bureau of Land Management (BLM) completed an EIS in 2003 on its plan for oil and gas leasing on up to 8.8 million acres of Federal land in northern Alaska known as the Northwest Planning Area. The EIS included five alternatives, including No Action. The four action alternatives entailed making from 47 to 100 percent of the BLM-administered lands available for leasing and assumed different types of management actions and mitigation measures (e.g., designation of special areas for wildlife, limits on surface disturbance).

In regard to potential environmental impacts associated with drilling, BLM did not analyze specific parcels because, the agency contended, it had no way of knowing which, if any, areas subsequent exploration would find suitable for drilling. Instead, the EIS analyzed two hypothetical scenarios: one assuming exploration of half the available parcels but no actual development and the second assuming development of the total available resources.

Plaintiffs in *Northern Alaska Environmental Center et al. v. U.S. Bureau of Land Management et al.* challenged the adequacy of the EIS for its failure to include an analysis of site-specific environmental impacts. The U.S. Court of Appeals for the Ninth Circuit on July 26, 2006, upheld a lower court decision when it agreed with BLM that “no such drilling site analysis is possible until it is known where the drilling is likely to take place, and that can be known only after leasing and exploration.” Moreover, the court concluded, the environmental consequences at specific sites can be assessed in connection with later applications for permits for drilling at those sites.

The plaintiffs also alleged that the EIS had not considered an adequate range of reasonable alternatives, in particular, a “middle ground” alternative and an alternative recommended by the Audubon Society (“Audubon Alternative”) in public comments on the draft EIS. The court concluded that, given BLM’s policy objectives, consideration of the five alternatives was sufficient. In addition, the court concluded that BLM had incorporated protections similar to those in the Audubon Alternative into its Preferred Alternative (which provided for development while protecting certain areas), rather than adopting the entire Audubon Alternative, and thereby, “BLM adequately examined a range of viable alternatives in preparing the [Final EIS].”

Next, the plaintiffs argued that BLM’s analysis of mitigation in the EIS was insufficient. The court disagreed, noting that the alternatives did include steps to avoid or minimize harm and that “additional protective measures may be developed as part of NEPA evaluations of subsequent permit authorizations, including exploration and development plans. Because particular areas for development are not yet identified, the court concluded, “BLM development of more specific mitigating measures cannot be required at this stage.”

The final NEPA claim alleged by the plaintiffs is that the EIS should consider cumulative impacts associated with BLM’s proposal to amend the oil and gas leasing plan for adjacent Federal land (for which BLM completed an EIS in 2005). The court agreed that cumulative impacts must be addressed, but “at a later stage.” [Case No.: 05-35085]

Failure to Consider New Information Invalidates BLM's Utah Oil and Gas Leases

The U.S. District Court for the District of Utah on August 1, 2006, reversed a November 2003 BLM decision to sell oil and gas leases for 16 parcels of land in southern Utah. BLM violated NEPA, the court concluded, “after arbitrarily determining that it did not need to supplement existing NEPA analyses” in light of new information about wilderness characteristics of the land (e.g., naturalness, outstanding opportunities for solitude or primitive and unconfined recreation) and, for four of the leases, by not first preparing an adequate pre-leasing NEPA document.

Prior to selling the leases, BLM determined that none of the parcels in question were within wilderness study areas and so the parcels do not have wilderness characteristics. The court pointed out, though, that BLM had designated the wilderness study areas in 1982 and, in making the current determination, BLM relied on NEPA analyses

completed in the 1970s and 1980s. However, a 1999 BLM study had identified additional lands in Utah that contained wilderness character, and, the court found, 12 of the 16 parcels in question are located within these lands. In addition, the plaintiffs had provided BLM with information regarding the wilderness character of the four other parcels, and, in 2002, BLM concluded that there is a “‘reasonable probability’ that they ‘may contain’ wilderness characteristics,” the court wrote.

“BLM cannot know what the environmental effects of leasing and development will be to the specific wilderness values, in these specific places, if it declines to undertake the necessary supplemental analysis to evaluate whether its current leasing categories adequately protect these newly defined resources,” the court concluded in *Southern Utah Wilderness Alliance et al. v. Department of Interior et al.* [Case No.: 04-00574]

(continued on next page)

Court Finds Transboundary Impacts “Too Speculative” to Require Supplemental EIS

The U.S. District Court for the District of Nevada ruled that a supplemental EIS is not needed for a proposal where it found the potential environmental impacts to be “too speculative” and beyond U.S. control. The court also determined that supplemental information prepared by defendant Bureau of Reclamation after the lawsuit was filed demonstrated that a supplemental EIS is not needed.

These conclusions stem from a challenge filed in 2005 to the Bureau of Reclamation’s final authorization of the All-American Canal Lining Project. The 80-mile All-American Canal, completed in 1942, carries water from the Colorado River in Arizona to the Imperial and Coachella Valleys in southern California. Seepage from the unlined canal reduces the amount of water available to users in California but contributes to recharge of the Mexicali Aquifer, which underlies the Imperial Valley and, in Mexico, the Mexicali Valley. The Bureau of Reclamation completed an EIS in 1994 and decided to line the canal, thereby reducing seepage and providing more irrigation water to California users. A decade later, however, work had not begun. In January 2006, the Bureau of Reclamation issued a Supplemental Information Report concluding that no substantial change, or significant new information or circumstances, existed that would require preparation of a supplemental EIS.

In *Consejo de Desarrollo Economico de Mexicali, AC, et al. v. U.S. et al.*, the plaintiffs alleged, among other things, that the Bureau of Reclamation violated NEPA by not preparing a supplemental EIS to address alleged

significant new information regarding a wetland in Mexico and its value as habitat for an endangered species; socioeconomic impacts in Mexicali, Mexico, and across the border in the U.S.; potential impacts to the Salton Sea, a 376-square-mile lake located in a southern California desert ecosystem; and other potential environmental and health impacts in the Imperial Valley region.

The court’s analysis divided the plaintiffs’ allegations into ones dealing with impacts in Mexico and in the U.S. In regard to transboundary impacts, the court concluded that “because the impacts in Mexico are beyond agency control and their impacts within the United States are too speculative, NEPA’s ‘rule of reason’ does not require” the Bureau of Reclamation to prepare a supplemental EIS.

The court’s review of allegations related to domestic impacts centered on the Bureau of Reclamation’s 2006 Supplemental Information Report. The plaintiffs alleged that the Report did not adequately address changes in information or circumstances since 1994, when the existing EIS was completed. The court determined that precedent in the Ninth Circuit Court of Appeals allows an agency “to use even an untimely” Supplemental Information Report because if an agency determines through such a Report that there is not significant new information compelling preparation of a supplemental EIS, it would serve no useful purpose to direct the agency to re-study the matter. In this case, the court found the analysis in the Report sufficient and concluded that a supplemental EIS was not required. [Case No.: 05-0870] 

Training Opportunities

NEPA-related courses are listed in the Lessons Learned Quarterly Report for information only, without endorsement. Cost and schedule information are subject to change; check with the course provider.

- **Cumulative Impacts Assessment (FED 104)**

New York, NY: September 12-14

No fee

- **NEPA and Air Impacts (FED 111)**

Kansas City, KS: September 19-21

Washington, DC: October 31-November 2

Philadelphia, PA: November 14-16

No fee

- **NEPA and Adaptive Management (FED 110)**

Chicago, IL: September 26-28

Washington, DC: October 10-12

San Francisco, CA: October 24-26

No fee

Environmental Protection Agency

Office of Federal Activities

202-564-7164

totten.arthur@epa.gov

www.netionline.com

- **Tribal Consultation**

Durham, NC: October 25-27

Fee: \$800

- **Current and Emerging Issues in NEPA**

Durham, NC: November 15-17

Fee: \$750

- **NEPA Certificate Program**

Requires one core and three elective Duke University NEPA short courses and a paper.

Previously completed courses may be applied.

Co-sponsored by the Council on Environmental Quality.

Fee: Included in registration for constituent courses

Nicholas School of the Environment
and Earth Sciences – Duke University
919-613-8082

del@nicholas.duke.edu

www.env.duke.edu/del/continuing/certificates.html

- **Cultural and Natural Resource Management Endangered Species Act Overview**

Las Vegas, NV: September 19-22

Fee: \$1,110 (GSA contract: \$995)

Anchorage, AK: November 14-17

Fee: \$1,060 (GSA contract: \$945) until 10/1/06

- **How to Manage the NEPA Process and Write Effective NEPA Documents**

Salt Lake City, UT: September 20-22

Fee: \$885 (GSA contract: \$795)

Baltimore, MD: October 31-November 3

Fee: \$1,040 (GSA contract: \$925) until 9/26/06

- **Writing for Technical Specialists**

Portland, OR: October 17-19

Fee: \$835 (GSA contract: \$745) until 9/10/06

- **Managing NEPA Projects and Teams**

Atlanta, GA: October 24-26

Fee: \$885 (GSA contract: \$795)

- **Reviewing NEPA Documents**

Salt Lake City/Park City, UT: October 24-26

Fee: \$885 (GSA contract: \$795)

- **NEPA Cumulative Effects Analysis and Documentation**

Atlanta, GA: November 14-16

Fee: \$835 (GSA contract: \$745) until 10/15/06

- **NEPA Process Management – Emphasis on Native American Issues**

Albuquerque, NM: November 14-16

Fee: \$835 (GSA contract: \$745) until 10/6/06

- **Advanced Writing for NEPA Specialists**

Las Vegas, NV: November 28-30

Fee: \$835 (GSA contract: \$745) until 10/5/06

The Shipley Group

888-270-2157 or 801-298-7800

shipley@shipleygroup.com

www.shipleygroup.com

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Training Opportunities

(continued from previous page)

- **NEPA Certificate Program**

Conducted through Utah State University. Requires successful completion of four core and three elective courses offered by The Shipley Group. Courses completed in 2000 or later may be applied toward the certificate. Also requires completion of course exams and a final project.

Fee: \$4,955 (includes tuition, course fees, and all course materials)

Natural Resources and
Environmental Policy Program
Utah State University
435-797-0922
judy.kurtzman@usu.edu
www.cnr.usu.edu/policy

- **Comprehensive NEPA**

Salt Lake City, UT: October 31-November 3
Fee: \$895 (discounts available)

SWCA Environmental Consultants
800-828-7991
training@swca.com
www.swca.com/jsps/training/training.htm

- **NEPA: What Every Engineer and Project Manager Should Know about NEPA**

Denver, CO: September 14-15
Las Vegas, NV: February 15-16
Fee: Contact vendor

Tetra Tech, Inc.
877-468-3872
www.tetrattechNEPA.com

Customized NEPA Training

- **Environmental Impact Training**

Courses cover topics such as environmental impact assessment, cumulative effects, environmental justice, reviewing NEPA documents, and adaptive management. Topics can be combined to meet the specific training needs of clients.

Environmental Impact Training
830-596-8804
info@eiatraining.com
www.eiatraining.com

- **NEPA Toolbox™ Training**

Courses are custom-designed to meet specific needs and are conducted at the requestor's facility. Example course content includes essentials, cumulative impacts, public participation, and EA and EIS preparation. A specialized DOE NEPA Document Manager course also is available. Services are available through a GSA contract.

Environmental Training & Consulting
International, Inc.
503-274-1790
info@envirotrain.com
www.envirotrain.com

- **Jones & Stokes Environmental Education**

Workshops and seminars are conducted through training organizations and university continuing education programs. Courses can be customized to meet specific needs, focusing on environmental topics, including NEPA.

Jones & Stokes
916-737-3000
sgorajewski@jsanet.com
www.jonesandstokes.com

- **Attaining Environmental Justice through NEPA**

Denver, CO: Contact vendor to schedule a course
Fee: Contact vendor

- **NEPA in Indian Country**

Denver, CO: Contact vendor to schedule a course
Fee: Contact vendor

International Institute for Indigenous
Resource Management
303-733-0481
iiirm@iiirm.org
www.iiirm.org

EAs and EISs* Completed April 1 to June 30, 2006

EAs

Y-12 Site Office/

National Nuclear Security Administration

DOE/EA-1529 (7/6/05)**

Transportation of Unirradiated Uranium in Research Reactor Fuel from Argentina, Belgium, Japan, and the Republic of Korea to the Y-12 National Security Complex, Anderson County, Tennessee

Cost: \$77,000

Time: 6 months

DOE/EA-1548 (3/29/06)**

Potable Water System Upgrades Project, Anderson County, Tennessee

Cost: \$100,000

Time: 9 months

* No EAs or EISs completed during this quarter

** Not previously reported in LLQR

What Worked and Didn't Work

To foster continuing improvement in the Department's NEPA Compliance Program, DOE Order 451.1B requires the Office of NEPA Policy and Compliance to solicit comments on lessons learned in the process of completing NEPA documents and distribute quarterly reports. However, because only two EAs were reported in this quarter, input from the EA questionnaires will be incorporated in the *What Worked and Didn't Work* section of the December 2006 LLQR.

NEPA Document Cost and Time Facts

EA Costs and Completion Times

- The median and average cost for the preparation of 2 EAs reported in this quarter was \$89,000.
- Cumulatively, for the 12 months that ended June 30, 2006, the median cost for the preparation of 13 EAs for which cost data were applicable was \$100,000; the average was \$141,000.
- The median and average completion time of 2 EAs reported in this quarter was 8 months.
- Cumulatively, for the 12 months that ended June 30, 2006, the median completion time for 16 EAs was 8 months; the average was 14 months.

EIS Costs and Completion Times

- No EISs were completed during this quarter.
- Cumulatively, for the 12 months that ended June 30, 2006, the median and average cost for the preparation of 2 EISs for which cost data were applicable was \$1,670,000.
- Cumulatively, for the 12 months that ended June 30, 2006, the median completion time for 3 EISs was 27 months; the average was 24 months.

Recent EIS-Related Milestones (June 1 to August 31, 2006)

Notices of Intent

Bonneville Power Administration

DOE/EIS-0397

Lyle Falls Fish Passage Project, Klickitat County, Washington

June 2006 (71 FR 36329, 6/26/06)

Office of Fossil Energy/

National Energy Technology Laboratory

DOE/EIS-0394

The FutureGen Project

July 2006 (71 FR 42840, 7/28/06)

Western Area Power Administration

DOE/EIS-0389

Construction and Operation of the Trinity Public Utility District Direct Interconnection Project, Trinity County, California

June 2006 (71 FR 35266, 6/19/06)

DOE/EIS-0390

Eastern Plains Transmission Project, Colorado and Kansas

August 2006 (71 FR 43733, 8/2/06)

Draft EISs

Office of Fossil Energy

DOE/EIS-0383

Orlando Gasification Project, Orlando, Florida

August 2006 (71 FR 50411, 8/25/06)

National Nuclear Security Administration/

Los Alamos National Laboratory

DOE/EIS-0380

Site-wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico

July 2006 (71 FR 38641, 7/7/06)

Record of Decision

Bonneville Power Administration

DOE/EIS-0183

Supplement to Administrator's Record of Decision on Bonneville Power Administration's Service to Direct Service Industrial (DSI) Customers for Fiscal Years 2007–2011

June 2006 (71 FR 35266, 6/19/06)

Supplement Analyses

Bonneville Power Administration

Wildlife Mitigation Program

Environmental Impact Statement

(DOE/EIS-0246)

DOE/EIS-0246-SA-52*

Hellsgate Big Game Winter Range - Wildlife Mitigation Project, Okanogan and Ferry Counties, Washington

(Decision: No further NEPA review required)

May 2006

DOE/EIS-0246-SA-53*

Continuation for the Wanaket Wildlife Area Operation and Maintenance, and Monitoring and Evaluation for FY06–07, Umatilla County, Oregon

(Decision: No further NEPA review required)

April 2006

Watershed Management Program

Environmental Impact Statement

(DOE/EIS-0265)

DOE/EIS-0265-SA-260*

Pine Hollow Watershed Projects, Sherman County, Oregon

(Decision: No further NEPA review required)

May 2006

DOE/EIS-0265-SA-261*

Hood River Habitat - West Fork Large Woody Debris 2006, Hood River County, Oregon

(Decision: No further NEPA review required)

May 2006

DOE/EIS-0265-SA-262*

Continuation of the Iskuulpa Watershed Project Operation and Maintenance, and Monitoring and Evaluation for FY06–07, Umatilla County, Oregon

(Decision: No further NEPA review required)

May 2006

DOE/EIS-0265-SA-263

Rehabilitate Lapwai Creek and Protect and Restore the Big Canyon Creek Watershed, Nez Perce Reservation and Nez Perce County, Idaho

(Decision: No further NEPA review required)

June 2006

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* Not previously reported in LLQR

Recent EIS-Related Milestones (June 1 to August 31, 2006)

(Supplement Analyses, continued from previous page)

DOE/EIS-0265-SA-264

Satus Creek Watershed Restoration Project - Lincoln Meadow Road Removal and Relocation (Yakama Reservation Watersheds Project - FY2006), Yakama Nation Reservation and Washington State
(Decision: No further NEPA review required)
July 2006

DOE/EIS-0265-SA-265

Meadow Creek Habitat Restoration, Union County, Oregon
(Decision: No further NEPA review required)
July 2006

DOE/EIS-0265-SA-266

End Creek Habitat Restoration, Union County, Oregon
(Decision: No further NEPA review required)
July 2006

DOE/EIS-0265-SA-267

Lemhi SWCD Habitat Projects for FY 06, L-13 Diversion Modification, L-63 Diversion Modification and L-8A Side Channel Riparian Protection Fence, Lemhi County, Idaho
(Decision: No further NEPA review required)
July 2006

DOE/EIS-0265-SA-268

John Day Watershed Restoration Program, Wheeler and Grant Counties, Oregon
(Decision: No further NEPA review required)
July 2006

DOE/EIS-0265-SA-269

Coeur d'Alene Tribe Fisheries Habitat Improvement Project, Coeur d'Alene Indian Reservation and Benewah County, Idaho
(Decision: No further NEPA review required)
July 2006

DOE/EIS-0265-SA-270

Hood River Habitat - Tony Creek Diversion 2006, Hood River County, Oregon
(Decision: No further NEPA review required)
July 2006

Transmission System Vegetation Management Program Environmental Impact Statement (DOE/EIS-0285)

DOE/EIS-0285-SA-296*

Vegetation Management along the Keeler - Allston No. 1 [500 kV Transmission Line Corridor], Multnomah, Washington, and Columbia Counties, Oregon
(Decision: No further NEPA review required)
May 2006

DOE/EIS-0285-SA-297*

Vegetation Management along the Chehalis - Mayfield No. 1, 230 kV and Mossy Rock - Chehalis No. 1, 230 kV Transmission Line Corridors from Chehalis Substation Heading East to Silver Creek and Mossy Rock Substations, Lewis County, Washington
(Decision: No further NEPA review required)
May 2006

DOE/EIS-0285-SA-298*

Vegetation Management along the Chehalis - Olympia No. 1, 230 kV and Chehalis - Centralia No. 2, 69 kV Transmission Line Corridors from Chehalis Substation Heading North to Olympia Substation, Lewis and Thurston Counties, Washington
(Decision: No further NEPA review required)
May 2006

DOE/EIS-0285-SA-299*

Vegetation Management along the Paul - Olympia No. 1, 500 kV and Paul - Satsop No. 1, 500 kV Transmission Line Corridors from Paul Substation Heading North to Olympia Substation, Lewis and Thurston Counties, Washington
(Decision: No further NEPA review required)
May 2006

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* Not previously reported in LLQR

Recent EIS-Related Milestones (June 1 to August 31, 2006)

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DOE/EIS-0285-SA-300*

Vegetation Management along the Lower Monumental - Little Goose No. 1 and 2, 500 kV and Mossy Rock - Chehalis No. 1, 230 kV Transmission Line Corridor Right of Way and Associated off Right of Way Roads, Whitman County, Washington

(Decision: No further NEPA review required)

May 2006

DOE/EIS-0285-SA-301*

Vegetation Management along the Kalispell - Kerr No. 1, 115 kV Transmission Line Corridor Right of Way, Flathead and Lake Counties, Montana

(Decision: No further NEPA review required)

May 2006

DOE/EIS-0285-SA-302

Vegetation Management along the Dalles - Chenoweth No. 1 from the Dalles Substation to the Chenoweth Substation, Wasco County, Oregon

(Decision: No further NEPA review required)

June 2006

DOE/EIS-0285-SA-303

Vegetation Management along the Noxon - Hot Springs No. 1, 230 kV Transmission Line Corridor Right of Way, Sanders County, Montana

(Decision: No further NEPA review required)

June 2006

DOE/EIS-0285-SA-304

Vegetation Management along the Hot Springs - Rattlesnake No. 1, 230 kV Transmission Line Corridor Right of Way, Sanders, Lake, and Missoula Counties, Montana

(Decision: No further NEPA review required)

June 2006

DOE/EIS-0285-SA-305

Vegetation Management along the Flathead - Hot Springs No. 1, 230 kV Transmission Line Corridor Right of Way, Flathead, Lake, and Sanders Counties, Montana

(Decision: No further NEPA review required)

June 2006

DOE/EIS-0285-SA-306

Vegetation Management along Three Miles of Coyote Springs - Slatt Line, Morrow County, Oregon

(Decision: No further NEPA review required)

June 2006

DOE/EIS-0285-SA-307

Vegetation Management along the Seven Mile Big Eddy - Chenoweth, Nos. 1 and 2 Lines, Wasco County, Oregon and Klickitat County, Washington

(Decision: No further NEPA review required)

June 2006

DOE/EIS-0285-SA-308

Vegetation Management along the Right of Way of the McNary Santiam No. 2 Transmission Line Corridor, Linn and Marion Counties, Oregon

(Decision: No further NEPA review required)

June 2006

DOE/EIS-0285-SA-309

Vegetation Management along the Trojan - Allston Nos. 1 and 2 Lines, 230 kV Transmission Line Corridor, Columbia County, Oregon

(Decision: No further NEPA review required)

June 2006 LL

* Not previously reported in LLQR

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The NEPA Book: A Step-by-Step Guide

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